

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BONNIE STODDARD
Claimant

VS.

U.S.D. #259
Self-Insured Respondent

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Docket No. **1,037,621**

ORDER

Claimant requested review of the January 15, 2010 Award by Administrative Law Judge Thomas Klein. This claim was set for oral argument on April 16, 2010, but an emergency on that date prevented claimant's attorney from appearing and the hearing was postponed. The parties later agreed to place the case on the summary docket for disposition without oral argument.

APPEARANCES

Melvin L. Gregory of Wichita, Kansas, appeared for the claimant. Vincent A. Burnett of Wichita, Kansas, appeared for the self-insured respondent.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

It was undisputed that claimant suffered a slip and fall at work. But the parties disagreed whether claimant suffered any permanent impairment as a result of the accident. The Administrative Law Judge (ALJ) ordered two independent medical examinations of claimant. The two physicians who performed those examinations concluded claimant did not suffer any permanent impairment as a result of her work-related accidental fall. The ALJ found those opinions more persuasive than claimant's medical expert and denied claimant an award for permanent impairment.¹

¹ There is no dispute that claimant is entitled to the temporary total disability compensation and medical compensation as listed in the stipulations in the Award.

Claimant requests review of the nature and extent of disability. Claimant did not file either a submission letter with the ALJ or a brief to the Board.

Respondent argues that the ALJ's Award should be affirmed. In the alternative, respondent argues claimant should be limited to a 2 percent permanent partial functional impairment to the left lower leg.

The sole issue for Board determination is whether claimant suffered a permanent impairment as a result of her work-related accidental injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

On October 11, 2005, claimant had left the classroom where she worked as a pre-kindergarten teacher and was walking down a dimly lit hallway when she slipped on some water on the floor and fell. Claimant testified that she injured her back and left foot. Respondent referred claimant to Dr. Mark Dobyns for medical treatment.

When claimant saw Dr. Dobyns on October 12, 2005, she complained of left foot and back pain. Although Dr. Dobyns initially suspected an L3 fracture, x-rays were read as normal for the back, foot and ankle. Dr. Dobyns diagnosed claimant with a lumbar sprain and left ankle sprain. Claimant was prescribed a CAM boot to immobilize her left ankle, medications and taken off work for a week. At a follow-up visit on October 17, 2005, claimant was released to sit down work. At her next visit with Dr. Dobyns on October 31, 2005, claimant indicated that for the most part she was pain free although she occasionally had a little foot pain. She was able to walk without a limp and was pain free in her low back. Consequently, Dr. Dobyns released claimant to full-duty work and noted she had sustained no permanency as a result of her accidental injury.

In April 2007 claimant again notified respondent that she had left foot pain which she attributed to the 2005 accidental injury. Claimant testified that she was never pain free after Dr. Dobyns had released her from treatment. And as she continued working her pain had progressively worsened and spread to her knees.

Although approximately a year and a half had passed since claimant had been released from medical treatment by Dr. Dobyns, the respondent agreed to send claimant back to Dr. Dobyns who examined her on April 19, 2007. Claimant only complained of her left foot pain. Claimant stated that her foot had remained painful after she had been released from treatment in 2005. Dr. Dobyns questioned claimant about the fact she had indicated her foot was essentially pain free in 2005. Claimant responded that her foot had never improved. Dr. Dobyns ordered bone scans of claimant's feet. The scans revealed

areas of increased activity in both feet. Consequently, claimant was referred for an orthopedic evaluation with Dr. Pat Do.

Dr. Do first saw claimant on May 7, 2007. Claimant complained of left foot pain since her injury in October 2005. An MRI was performed on her foot and revealed degenerative changes but no fracture. After claimant completed two rounds of physical therapy she was released at maximum medical improvement without restrictions on July 31, 2007. Dr. Do rated claimant with a 2 percent left lower extremity functional impairment.

At the request of claimant's attorney, Dr. George Fluter examined claimant on January 2, 2008. Dr. Fluter attributed claimant's left foot, left hip, bilateral knee and low back pain to her injury of October 11, 2005. Dr. Fluter made treatment recommendations to address all the areas of claimant's complaints.

After Dr. Do had released claimant she again sought additional medical treatment for pain in both feet, both knees, her left hip and her back. Respondent denied claimant's ongoing complaints were related to her accidental injury in 2005. A preliminary hearing was held on claimant's request for additional medical treatment. The ALJ ordered Dr. Paul Stein to perform an independent medical examination of claimant to address causation for her complaints as well as any treatment recommendations.

Dr. Stein conducted claimant's examination on March 7, 2008. Dr. Stein reviewed claimant's medical records and performed a physical examination of claimant. Dr. Stein noted that claimant's back complaints resolved after a month which was consistent with a back strain. After claimant was released by Dr. Dobyns in October 2005 she did not seek additional medical attention for her back nor mention of back complaints in the medical records until December 2007. Consequently, Dr. Stein, after noting claimant's obesity another reason for back pain, concluded claimant did not suffer a permanent injury to her back from the October 2005 accidental injury. Likewise, Dr. Stein noted the medical records did not reflect claimant complained of knee pain until August 13, 2007, which he noted was quite a long time after her fall. Dr. Stein opined that the primary problem with her knees was degenerative disease caused by obesity and there was no causal relationship between her current knee complaints and the fall in October 2005. Finally, Dr. Stein noted that claimant only complained of left foot pain at the time he examined her. Dr. Stein further noted that after claimant was released from treatment for her foot in 2005, the medical records did not reveal any attempt for treatment until claimant reported bilateral foot pain to her primary care physician on November 11, 2006. Dr. Stein concluded the bilateral foot complaints were related to degenerative joint disease and plantar fasciitis but not her 2005 accident. Although Dr. Stein concluded claimant's complaints were not related to the fall, he recommended a referral to a foot specialist.

The ALJ then ordered an independent medical examination of claimant to determine causation and treatment recommendations for claimant's left foot. Dr. Naomi Shields

performed that examination of claimant on September 26, 2008. Dr. Shields reviewed claimant's medical records and performed a physical examination of claimant. Dr. Shields noted that after claimant was released from treatment by Dr. Dobyns in October 2005, the medical records revealed that although she had seen her personal physician on multiple occasions in the interim, she did not mention foot pain until November 2006. Consequently, Dr. Shields concluded that there was no good evidence that claimant's current left foot symptoms were due to her 2005 accidental injury. Moreover, Dr. Shields noted that claimant's foot pain was originally in the middle of the foot, then in 2006 was diagnosed as plantar fasciitis and upon Dr. Shield's examination the complaint was under the metatarsal heads and base of the toes.

At the request of claimant's attorney, Dr. Fluter again examined claimant on April 8, 2009. Dr. Fluter reviewed the claimant's medical records and performed a physical examination of claimant. Claimant complained of pain in her lower back, both knees, her left ankle and foot. Dr. Fluter opined that there was a causal relationship between claimant's condition and the injury that occurred in October 2005. Dr. Fluter concluded that after the injury to her left foot claimant developed an altered gait which led to the development of pain in her back and knees. Dr. Fluter, based upon range of motion measurements, rated claimant's permanent partial impairment to the right knee at 10 percent and the left knee at 10 percent. Dr. Fluter further rated claimant with a 7 percent permanent partial impairment to the left lower extremity for mild ankle range of motion deficits. Finally, Dr. Fluter concluded claimant's findings for the back would place her in Lumbosacral Category II which is a 5 percent functional impairment. Converting the lower extremity ratings and combining those with the rating for the back would result in a 16 percent whole person functional impairment.

A claimant in a workers compensation proceeding has the burden of proof to establish by a preponderance of the credible evidence the right to an award of compensation and to prove the various conditions on which his or her right depends.² The determination of the existence, extent and duration of the injured worker's incapacity is left to the trier of fact.³ It is the function of the trier of fact to decide which testimony is more accurate and/or credible and to adjust the medical testimony with the testimony of the claimant and others in making a determination on the issue of disability. The trier of fact must make the ultimate decision as to the nature and extent of injury and is not bound by the medical evidence presented.⁴

Claimant argued that her left foot and back condition never improved after her slip and fall accident and ultimately led to bilateral knee complaints as she developed an

² K.S.A. 44-501(a); *Perez v. IBP, Inc.*, 16 Kan. App. 2d 277, 826 P.2d 520 (1991).

³ *Boyd v. Yellow Freight Systems, Inc.*, 214 Kan. 797, 522 P.2d 395 (1974).

⁴ *Graff v. Trans World Airlines*, 267 Kan. 854, 983 P.2d 258 (1999).

altered gait. The difficulty with this argument is that after her accident she received treatment and then indicated that her back condition had resolved and her left foot pain had essentially resolved. In October 2005 she was released from treatment and it was not until November 2006 that the medical records indicate she complained of bilateral foot pain. And as noted by Dr. Shields, her pain complaints were in a different area of her left foot and she complained of right foot pain for the first time. Moreover, the medical records do not contain complaints of knee pain until August 2007 or mention of back pain until December 2007. Because of the lapse of time and absence of complaints even though she was receiving treatment for other problems, the court ordered independent medical examiners both concluded claimant's current condition and complaints were not related to her October 2005 accidental injury. The ALJ found the court ordered independent medical opinions more credible. The Board agrees and affirms.

AWARD

WHEREFORE, it is the decision of the Board that the Award of Administrative Law Judge Thomas Klein dated January 15, 2010, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of June 2010.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Melvin L. Gregory, Attorney for Claimant
Vincent A. Burnett, Attorney for Self-Insured Respondent
Thomas Klein, Administrative Law Judge